IN THE HIGH COURT OF JUDICATURE
ANDHRA PRADESH
AT HYDERABAD

THE HON'BLE MR JUSTICE J.CHELAMESWAR

WRIT PETITION NO : 26423 of 1996

Dated: 12th December 2006.

Between:
Bollabothula Lakshminarayana and
two others .. Petitioners

and

The Spl. Dy. Collector (LA Unit),
LMD Colony, Karimnagar .. Respondent

ORAL ORDER:

The three petitioners are owners of various parcels of land in Pothgal village, Karimnagar District. Admittedly, the property of these petitioners were acquired by the State for a public purpose. By an Award No. 2/78-79, dated 16.8.1978, the Land Acquisition Officer determined the compensation payable to the petitioners, the details of which may not be necessary for the present purpose. It appears apart from the lands of the petitioners, some more properties were acquired for the same purpose by the same notification under which the lands of the petitioners were acquired. Some of the land oustees who are not satisfied with the award carried the

matter to the Civil Court by way of reference under Section 18 of the Land Acquisition Act. It appears that the said reference was numbered as OP No. 740 of 1985 on the file of II Addl. District Judge, Karimnagar and on a consideration of the material before the Civil Court, the Civil Court enhanced the compensation payable to the applicants in the above mentioned OP.

Subsequent to the disposal of the said OP, the petitioners filed applications under Section 28-A of the Land Acquisition Act for re-determination of the compensation in the light of the decision in the above mentioned OP. The respondent by Memo No.D/382/88, dated 22.3.1996 rejected the application of the petitioners on the ground that the petitioners received the compensation without any protest and did not carry the matter in a reference under Section 18. Hence the present writ petition with the prayer as follows:

> "For the reasons stated in the accompanying affidavit, it is prayed that this Hon'ble Court may be pleased to issue a writ, order or direction more in the nature of Mandamus directing the respondent herein to consider the common petition dt. 18.4.88 filed u/Sec. 28-A of the L.A. Act for redetermination of the compensation of the

properties acquired by duly declaring the Memo No.D/382/88, dt. 22.3.1996 issued by the respondent rejecting the application filed U/Sec. 28-A of the Act on the ground that the petitioners have not received the compensation amount under protest as illegal, arbitrary and contrary to the provisions of Sec. 28-A of the Act and also contrary to the judgments rendered by this Hon'ble Court while dealing with the matters pertaining to Sec. 28-A of the L.A. Act and pass such other order or orders as this Hon'ble Court may deem fit and proper."

Relevant portion of the Memo reads as follows :

"I invite your reference 2nd cited, and it is inform that on verification of petitioners U/s. 28-A of L.A. Act filed by the petitioners according to orders passed by the II Addl. District Judge, Karimnagar in O.P. No. 740/85 of Pothugal (V) with the Award No. 2/78-79, dated 16.8.1978 and concernced Acquittance Register, it is found that the Land Compensation Amount was received by you **"Without Protest".** Hence your petitions U/Sec. 28-A of

L.A. Act are hereby rejected according to L.A Amendment Act, 1984."

The fact that the petitioners received the compensation amount payable to them without protest is irrelevant while considering the application under Section 28-A of the Land Acquisition Act. The issue is no more *res integra* and covered by a Constitution Bench of the Surpeme Court reported in **Union of India v. Hansoli Devi (S.C.)**[1]**.** At para 12 of the judgment, the Supreme Court held as follows in this regard :

> "12. Coming to the second question for reference the receipt of compensation with or without protest pursuant to the award of the Land Acquisition Collector is of no consequence for the purpose of making a fresh application under Sec. 28-A. If a person has not filed an application under Sec. 18 of the Act to make a reference, then irrespective of the fact whether he has received the compensation awarded by the Collector with or without protest, he would be a person aggrieved with the meaning of Sec. 28-A and would be entitled to make an application when some other land owner's application for reference is answered by the reference Court. It is apparent on the plain language of the provisions of Sec. 28-A of the Act. Otherwise,

> it would amount to adding one more condition, not contemplated or stipulated by the Legislature itself to deny the benefit of substantial right conferred upon the owner."

In the circumstances, this Court has no option but to allow the writ petition as prayed for. The Writ Petition is accordingly allowed, but in the circumstances without costs.

KNK 12.12.2006

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[1] 2003(1) An. WR 111 (SC)